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(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

To prevent deceptive software transmission practices in order to safeguard computer privacy, maintain computer control, and protect Internet commerce.

_____

IN THE HOUSE OF REPRESENTATIVES

Mr. INSLEE introduced the following bill; which was referred to the Committee on _____

_____

A BILL

To prevent deceptive software transmission practices in order to safeguard computer privacy, maintain computer control, and protect Internet commerce.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Computer Software

5 Privacy and Control Act".
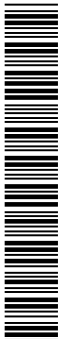
1 **SEC. 2. DEFINITIONS.**

2   As used in this Act, the following definitions apply:

3   (1) The terms "computer" and "protected com-

4   puter" have the meanings given such terms in sec-

5   tion 1030(e) of title 18, United States Code.

6   (2) The term "computer software" means a se-

7   quence of instructions written in any programming

8   language that is stored or executed on a computer.

9   Such term shall not include computer software that

10   is a Web page, or data components of Web pages

11   that are not executable independently of the Web

12   page.

13   (3) The term "disable", with regards to com-

14   puter software, or a component thereof, means to

15   permanently prevent such software or component

16   from executing any of the functions described in sec-

17   tion 3 that such software is otherwise capable of exe-

18   cuting, unless the owner or operator of a protected

19   computer takes a subsequent affirmative action to

20   enable the execution of such functions.

21   (4) The terms "execute", "execution", and

22   "executable", when used with respect to computer

23   software, refer to the performance of the functions

24   or the carrying out of the instructions of the com-

25   puter software.
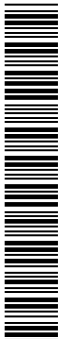
1   (5) The term "first retail sale" means the first

2   sale of a computer, for a purpose other than resale,

3   after the manufacture, production, or importation of

4   the computer. For purposes of this paragraph, the

5   lease of a computer shall be considered a sale of the

6   computer at retail.

7   (6) The term "Internet" has the meaning given

8   such term in section 1302(6) of the Children's On-

9   line Privacy Protection Act of 1998 (15 U.S.C.

10   6501(6)).

11   (7) The term "owner or operator", with respect

12   to a protected computer, shall not include any per-

13   son who owns a computer prior to the first retail

14   sale of such computer.

15   (8) The term "person" has the meaning given

16   that term in section 1030(e)(12) of title 18, United

17   States Code.

18   (9) The term "personal information" means—
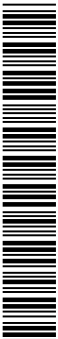
19   (A) a first and last name;

20   (B) a home or other physical address in-

21   cluding street name;

22   (C) an electronic mail address;

23   (D) a telephone number;

24   (E) a Social Security number;

4

1   (F) a credit card or bank account number

2   or any password or access code associated with

3   a credit card or bank account; and

4   (G) a birth certificate number.

5   (10) The term ''removal utility'' means a means

6   by which the owner or operator of a protected com-

7   puter can remove, delete, or disable computer soft-

8   ware, or a component thereof.

9   (11) The term ''transmit'' means to transfer,

10   send, or make available computer software, or any

11   component thereof, via the Internet or any other me-

12   dium, including local area networks of computers,

13   other non-wire transmission, and disc or other data

14   storage device, for the purpose of or resulting in an

15   economic benefit to the person transferring, sending,

16   or making available such computer software, or com-

17   ponent thereof, derived from the transmission or

18   execution of such software, or component thereof.

19   Such term shall not include any action by a person

20   providing—

21   (A) the Internet connection, telephone con-

22   nection, or other means of transmission capa-

23   bility such as a compact disk or digital video

24   disk through which the software was made

25   available;

5
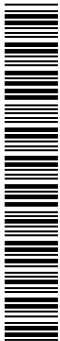
1   (B) the storage or hosting of the software

2   program or an Internet Web page through

3   which the software was made available; or

4   (C) an information location tool, such as a

5   directory, index, reference, pointer, or hypertext

6   link, through which the user of the computer lo-

7   cated the software,

8   unless such person receives a direct economic benefit

9   from the execution of such software on the protected

10 computer.

11   (12) The term "Web page" means a location

12 that has a single Uniform Resource Locator with re-

13 spect to the World Wide Web or other single location

14 with respect to the Internet.

15 **SEC. 3. UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN**

16   **THE TRANSMISSION OF COMPUTER SOFT-**

17   **WARE.**

18   (a) DECEPTIVE ACTS PROHIBITED.—It is unlawful

19 for any person knowingly to transmit to a protected com-

20 puter owned or operated by another person, or transmit

21 to a protected computer prior to the first retail sale of

22 such computer, any computer software, or any component

23 thereof, that—

24   (1) collects personal information about an

25   owner or operator of that protected computer and

1   transfers such information to any person other than

2   such owner or operator;

3   (2) monitors or analyzes the content of the

4   Internet web pages accessed by an owner or operator

5   of such computer and transfers information regard-

6   ing the accessing of such web pages to any person

7   other than such owner or operator; or

8   (3) modifies default computer settings or com-

9   puter settings previously selected by the owner or

10   operator of that computer that affect—

11   (A) the Web page that is first displayed by

12   computer software used to access and navigate

13   the Internet, such as an Internet browser;

14   (B) Internet connection settings, the modi-

15   fication of which can result in financial charges

16   to the owner or operator without the owner or

17   operator's knowledge; or

18   (C) the actions or operations of any service

19   offered by a provider of a service used to search

20   the Internet, or files and data stored on the

21   protected computer,

22 unless, before the execution of the functions described in

23 paragraphs (1) through (3), notice of such functions is

24 provided to, and consent to such execution is obtained

7
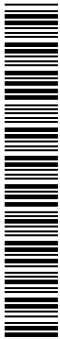
1 from, such owner or operator, and such software, or com-

2 ponent thereof, includes a removal utility.

3   (b) REQUIREMENTS FOR ADVERTISING SOFT-

4 WARE.—

5   (1) NOTICE AND CONSENT.—It is unlawful for

6   any person knowingly to transmit to a protected

7   computer owned or operated by another person, or

8   transmit to a protected computer prior to the first

9   retail sale of such computer, any computer software,

10   or any component thereof, that includes a function

11   to deliver or display advertisements, unless, before

12   the execution of such function, notice of such func-

13   tion is provided to, and the consent to such execu-

14   tion is obtained from, such owner or operator, and

15   such software, or component thereof, includes a re-

16   moval utility.

17   (2) SOFTWARE DISPLAYED AS A WEB PAGE.—

18   The requirements of paragraph (1) shall apply to

19   computer software containing a function to deliver

20   advertisements displayed as a Web page or by other

21   means, but shall not include software that is a Web

22   page or a component of a Web page.

23   (c) KNOWLEDGE REQUIREMENT.—For purposes of

24 this section, the term "knowingly", used with respect to

25 transmitting computer software, or a component thereof,
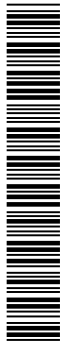
1 means that the person transmitting has actual knowledge

2 that the software or component transmitted has the capac-

3 ity to execute any of the functions described in this sec-

4 tion.

5 (d) NOTICE AND CONSENT REQUIREMENTS.—

6   (1) NOTICE.—The notice required under sub-

7 sections (a) and (b)—

8   (A) shall not be materially false or mis-

9   leading; and

10   (B) shall include a description of and di-

11   rections for the removal utility, or instructions

12   for the removal, deletion, or disabling of the

13   software, or component thereof.

14   (2) CONSENT.—The consent required under

15 subsections (a) and (b) shall be contiguous to the

16 notice required under such subsections, such that

17 the owner or operator of the protected computer

18 may reasonably understand the function or functions

19 to which such consent is granted.

20   (3) DEFINITION.—For purposes of this sub-

21 section, the term "materially false or misleading no-

22 tice" includes—

23   (A) a failure to describe any of the func-

24   tions requiring notice; and

9

1   (B) an unauthorized material modification

2   to or obstruction of a notice, description, or

3   warning provided by computer software pre-

4   viously stored or executed on the protected com-

5   puter.

6 **SEC. 4. ENFORCEMENT.**

7 (a) FEDERAL TRADE COMMISSION.—

8   (1) UNFAIR OR DECEPTIVE ACT OR PRAC-

9 TICE.—A violation of this Act shall be treated as a

10 violation of a rule defining an unfair or deceptive act

11 or practice prescribed under section 18(a) of the

12 Federal Trade Commission Act (15 U.S.C. 57a(a)).

13   (2) ACTIONS BY THE COMMISSION.—The Fed-

14 eral Trade Commission shall enforce this Act in the

15 same manner, by the same means, and with the

16 same jurisdiction, powers, and duties as though all

17 applicable terms and provisions of the Federal Trade

18 Commission Act (15 U.S.C. 41 et seq.) were incor-

19 porated into and made a part of this Act.

20 (b) CRIMINAL PENALTIES.—

21   (1) IN GENERAL.—Section 1030(a) of title 18,

22 United States Code, is amended—

23   (A) by inserting ''or'' at the end of para-

24   graph (7); and

25   (B) by adding at the end the following:

1   "(8) knowingly causes the transmission of a

2   program, information, code, or command with the

3   intent to obtain access without authorization or ex-

4   ceeding authorized access to a protected computer

5   by means of a knowingly and materially false or mis-

6   leading notice or description of function, effect, or

7   origin of such computer software;".

8   (2) DEFINITIONS.—Section 1030(e) of title 18,

9   United States Code, is amended—

10   (A) in paragraph (6)—

11   (i) by inserting ", or to obtain further

12   access to or control over the computer"

13   after "in the computer"; and

14   (ii) by striking "or alter" and insert-

15   ing ", alter, access, or control"; and

16   (B) by adding at the end the following:

17   "(13) The term 'knowingly and materially false

18   or misleading notice or description' includes a know-

19   ing and material omission regarding function of pro-

20   gram, information, code, or command that provides

21   access to or control over a protected computer.".

22   (3) PENALTIES.—Section 1030(c)(3) of title 18,

23   United States Code is amended—

24   (A) in subparagraph (A), by striking "or

25   (a)(7)" and inserting "(a)(7), or (a)(8)"; and
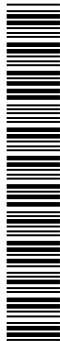
1   (B) in subparagraph (B), by striking "or
2   (a)(7)" and inserting "(a)(7), or (a)(8)".
3   (c) STATE ACTION.—
4   (1) IN GENERAL.—In any case in which the at-
5   torney general of a State has reason to believe that
6   an interest of the residents of that State has been
7   or is threatened or adversely affected by a violation
8   of section 3 of this Act, the State may bring a civil
9   action on behalf of the residents of the State in a
10   district court of the United States of appropriate ju-
11   risdiction to—
12   (A) enjoin that practice;
13   (B) enforce compliance with this Act; or
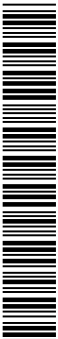14   (C) obtain damages, restitution, or other
15   compensation on behalf of residents of the
16   State.
17   (2) NOTICE.—
18   (A) IN GENERAL.—Before filing an action
19   under paragraph (1), the attorney general of
20   the State involved shall provide to the Federal
21   Trade Commission—
22   (i) written notice of that action; and
23   (ii) a copy of the complaint for that
24   action.

12

1   (B) EXEMPTION.—Subparagraph (A) shall

2 not apply with respect to the filing of an action

3 by an attorney general of a State under this

4 subsection, if the attorney general determines

5 that it is not feasible to provide the notice de-

6 scribed in that subparagraph before filing of the

7 action. In such case, the attorney general of a

8 State shall provide notice and a copy of the

9 complaint to the Federal Trade Commission at

10 the same time as the attorney general files the
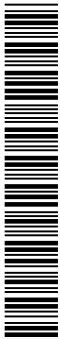
11 action.

12   (3) INTERVENTION BY FEDERAL TRADE COM-

13 MISSION.—

14   (A) IN GENERAL.—On receiving notice

15 under paragraph (2), the Federal Trade Com-

16 mission shall have the right to intervene in the

17 action that is the subject of the notice.

18   (B) EFFECT OF INTERVENTION.—If the

19 Federal Trade Commission intervenes in an ac-

20 tion under subparagraph (A), it shall have the

21 right—

22   (i) to be heard with respect to any

23 matter that arises in that action; and

24   (ii) to file a petition for appeal.

13

1   (4) CONSTRUCTION.—For purposes of bringing

2   any civil action under paragraph (1), nothing in this

3   Act shall be construed to prevent an attorney gen-

4   eral of a State from exercising the powers conferred

5   on the attorney general by the laws of that State

6   to—

7   (A) conduct investigations;

8   (B) administer oaths or affirmations; or

9   (C) compel the attendance of witnesses or

10   the production of documentary and other evi-

11   dence.

12   (5) PREEMPTION.—In any case in which an ac-

13   tion is instituted by or on behalf of the Commission

14   for a violation of section 3, no State may, during the

15   pendency of that action, institute an action under

16   paragraph (1) against any defendant named in the

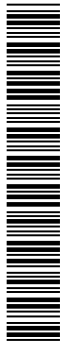17   complaint in that action.

18   (6) SERVICE OF PROCESS.—In an action

19   brought under paragraph (1), process may be served

20   in any district in which the defendant—

21   (A) is an inhabitant; or

22   (B) may be found.

23   **SEC. 5. EFFECT ON OTHER LAWS.**

24   This Act supersedes any statute, regulation, or rule

25   of a State or political subdivision of a State that expressly

14

1 regulates the transmission of computer software similar

2 to that described in section 3.

3 **SEC. 6. LAW ENFORCEMENT REPORTING REQUIREMENTS.**

4 (a) SEMIANNUAL REPORTS TO CONGRESS ON TRANS-

5 MISSION OF COMPUTER SOFTWARE FOR SURVEILLANCE

6 ACTIVITIES.—Not later than 1 year after the date of en-

7 actment of this Act, and every 6 months thereafter, the

8 Attorney General shall transmit to the Committees on the

9 Judiciary of the Senate and of the House of Representa-

10 tives a report concerning any warrant, order, or extension

11 of an order applied for by law enforcement agencies of

12 the Department of Justice, whose implementation involved

13 the transmission or execution of computer software on a

14 protected computer to record computer activity or inter-

15 cept any wire, oral, or electronic communications. Such

16 reports shall include information concerning—

17 　　　(1) the type of warrant, order, or extension of

18 　　　an order applied for;

19 　　　(2) the information sought by the warrant, pe-

20 　　　riod of interceptions authorized by the order, and

21 　　　the number and duration of any extensions of the

22 　　　warrant or order;

23 　　　(3) the offense specified in the application, war-

24 　　　rant, order, or extension of an order;

15

1   (4) the identity of the applying investigative or

2   law enforcement officer and agency making the ap-

3   plication and the person authorizing the application;

4   (5) the nature of the facilities from which or

5   place where activities were to be recorded or commu-

6   nications were to be intercepted;

7   (6) a general description of the recordings or

8   interceptions made under such order or extension,

9   including—

10   (A) the approximate nature and frequency

11   of incriminating activities recorded or commu-

12   nications intercepted;

13   (B) the approximate nature and frequency

14   of other activities recorded or communications

15   intercepted;

16   (C) the approximate number of persons

17   whose activities were recorded or communica-

18   tions were intercepted;

19   (D) the number of warrants or orders in

20   which encryption was encountered and whether

21   such encryption prevented law enforcement

22   from obtaining access to any information pursu-

23   ant to such warrant or the plain text of commu-

24   nications intercepted pursuant to such order;

25   and
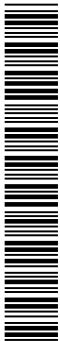
     (E) the approximate nature, amount, and
cost of the manpower and other resources used
in the recordings or interceptions;

  (7) the number of arrests resulting from recordings or interceptions made under such warrant, order, or extension of an order, and the offenses for which arrests were made;

  (8) the number of trials resulting from such recordings interceptions;

  (9) the number of motions to suppress made with respect to such recordings or interceptions, and the number of such motions granted or denied;

  (10) the number of convictions resulting from such recordings or interceptions and the offenses for which the convictions were obtained, and a general assessment of the importance of the recordings or interceptions; and

  (11) the specific persons authorizing the use of such computer software in the implementation of such warrant, order, or extension of an order.